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AUG 12 2017

Attorneys for Plaintiff
HUMBOLDT BAYKEEPER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUMBOLDT BAYKEEPER, a California non-profit association,

Plaintiff,

v.

CALIFORNIA REDWOOD COMPANY, a
California corporation,

Defendant.

Civil Case No.: 3:16-cv-06970-TEH

[Proposed] CONSENT DECREE

(Federal Water Pollution Control Act, 33
U.S.C. §1251 et seq.)

NOI 9-29-2016

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1 **WHEREAS**, Baykeeper contends that Defendant's operations at the Facilities result in
2 discharges into Humboldt Bay (the "Receiving Waters") and contends that those discharges are
3 regulated by the Clean Water Act, Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

4 **WHEREAS**, on September 27, 2016, Baykeeper served Defendant, the Administrator of the
5 U.S. Environmental Protection Agency ("EPA"), the Executive Director of the State Water Resources
6 Control Board ("State Water Board"), the Executive Officer of the North Coast Regional Water Quality
7 Control Board, ("Regional Board"), and the Regional Administrator of EPA Region IX, with a notice of
8 intent to file suit ("60-Day Notice") under Section 505(b)(1)(a) of the of the Clean Water Act, 33 U.S.C.
9 § 1365(b)(1)(A), alleging violations of the Clean Water Act and the Storm Water Permit and its previous
10 version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), at
11 the Facilities (a true and correct copy of Baykeeper's 60-Day Notice is attached as **Exhibit A** and
12 incorporated herein by reference);

13 **WHEREAS**, on December 5, 2016, Baykeeper filed a complaint against Defendant alleging
14 Defendant is in violation of the substantive and procedural requirements of the Storm Water Permit and
15 the Clean Water Act;

16 **WHEREAS**, Defendant denies all allegations and claims contained in the 60-Day Notice and the
17 Complaint and reserves all rights and defenses with respect to such allegations and claims;

18 **WHEREAS**, the Parties have agreed that it is in their mutual interest and choose to resolve in
19 full Baykeeper's allegations in the 60-Day Notice and Complaint through settlement and avoid the cost
20 and uncertainties of further litigation;

21 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTling**
22 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

23 1. For the purposes of this Consent Decree, the Parties agree: 1) the Court has jurisdiction over the
24 subject matter of this action pursuant to Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. §
25 1365(a)(1)(A); 2) venue is appropriate in the Northern District Court pursuant to Section 505(c)(1) of
26 the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facilities at which the alleged violations took
27 place are located within this District; 3) the Complaint states claims upon which relief may be granted
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1 against Defendant pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365; 4) Plaintiff has
2 standing to bring this action; and 5) the Court shall retain jurisdiction over this matter for purposes of
3 interpreting, modifying, or enforcing the terms of this Consent Decree for the life of the Consent Decree,
4 or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

5 **OBJECTIVES**

6 **2. Compliance with General Permit and Clean Water Act.** It is the express purpose of the
7 Parties entering into this Consent Decree that throughout the Term of this Consent Decree, which is
8 defined below in Paragraph 4, Defendant shall commence all measures needed to operate the Facilities
9 in full compliance with applicable requirements of the Storm Water Permit, and the Clean Water Act,
10 subject to any defenses available under the law. All actions taken by Defendant pursuant to this Consent
11 Decree shall be made in compliance with all applicable Federal and State laws and local rules and
12 regulations.

13 **EFFECTIVE DATE, AND TERM OF CONSENT DECREE**

14 **3. Effective Date.** The Effective Date of this Consent Decree shall mean the last day for the
15 Federal Agencies to comment on the Consent Decree, i.e., the forty-fifth (45th) day following the
16 Federal Agencies' receipt of the Consent Decree, or the date on which the Federal Agencies provide
17 notice that they require no further review, whichever occurs earlier.

18 **4. Term.** The Term of this Consent Decree shall cover four (4) complete Wet Seasons¹ following
19 the implementation of the Best Management Practices ("BMPs") set forth in Paragraphs 6.1 through
20 6.11 below, with the exception of the Treatment BMPs (*see* Paragraphs 6.1 and 6.2) at the Chip Facility
21 that may require permitting, plumbing, and installation, and thus additional time to implement. Should
22 an Action Plan be required per Paragraphs 5 and 14, below, based on sampling results from the 2019-
23 2020, or 2020-2021 reporting years², the Consent Decree will terminate upon complete implementation
24 of the measures described in the Action Plan. Should no Action Plan be required as described above, or
25 implementation of the BMPs required in the Action Plan are complete, the Term of this Consent Decree
26 shall run from the Effective Date until May 31, 2021.

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28 ¹ The "Wet Season" includes October 1st through May 31.

² A reporting year is July 1 to June 30.

COMMITMENTS OF DEFENDANT

5. BAT/BCT and Benchmark-Based Limits. If Defendant receives storm water sampling data demonstrating two or more exceedances of the same Table 1 Parameter Limit at either of the Facilities during one reporting year within the term of this Consent Decree, or fails to comply with any of the requirements of the Storm Water Permit, Defendant shall provide Baykeeper with an Action Plan for that Facility in compliance with the “Action Plan” requirements set forth below in Paragraphs 12 and 14 of this Consent Decree.

Table 1: Limits for Storm Water Discharges

Contaminant (All metals are total recoverable)	Limit (all but pH in mg/L)	Source of Limit
pH	6.0-9.0 s.u.	2008 EPA Benchmark
Zinc	0.26 mg/L	2008 EPA Benchmark
Chemical Oxygen Demand	120 mg/L	2008 EPA Benchmark
Oil & Grease	15 mg/L	2008 EPA Benchmark
Total Suspended Solids	100 mg/L	2008 EPA Benchmark

6. Best Management Practices. In addition to maintaining the current BMPs at the Facilities, within ninety (90) days of the Effective Date, unless otherwise noted, Defendant shall submit permit applications necessary (if any) to implement BMP upgrades identified herein as Exhibit C, to comply with the provisions of the Consent Decree, the Storm Water Permit and the Clean Water Act. Specifically, Defendant shall develop and implement BMPs to reduce and/or prevent contamination in storm water discharges from the Facilities consistent with the use of the BAT and the BCT and in compliance with applicable water quality standards (“WQS”).

CHIP FACILITY:

6.1 Discharges at SW-1S and SW-1N require treatment. Defendant will install treatment media into the above-ground storm water conveyance swales to chemically treat pH, and provide activated carbon or other appropriate filtration media to address Chemical Oxygen Demand (“COD”). This initial structural BMP treatment solution is described in Exhibit B incorporated by reference herein. If monitoring results demonstrate two or more exceedances of the same Table 1

1 Parameter Limit in any reporting year during the Term of this Consent Decree, Defendants shall
2 upgrade the system to include above-ground treatment as described in Exhibit C incorporated by
3 reference herein, or an equivalent or better alternative if available. Permit applications for
4 implementation of Exhibit C (if any) will be submitted to applicable agencies within thirty (30)
5 days of decision to implement. Construction of Exhibit C solution will be completed within ninety
6 (90) days of receipt of final permit approval. Defendant shall provide Baykeeper with all final
7 permitting applications within fifteen (15) days of submission, and all permitting notices on
8 progress from all applicable agencies within fifteen (15) days of receipt from any agency.

9 **6.2** By no later than October 15, 2017, Defendant shall have installed the treatment solution
10 described in Exhibit B. If monitoring results demonstrate two or more exceedances of the same
11 Table 1 Parameter Limit in any reporting year during the Term of this Consent Decree, Defendant
12 agrees to install, prior to October 15, of the next reporting year, an upgraded, fully operational
13 Treatment solution (Exhibit C, or an equivalent or better treatment solution if available) at SW-1S
14 and SW-1N, resulting in effectively treated storm water discharge. If as a result solely of delay
15 caused by regulatory agencies or other factors beyond Defendant's control subject to the force
16 majeure provisions in Paragraph 40, Defendant is unable to install and operate the upgraded
17 Treatment solution by October 15, of the next reporting year, the Parties shall confer regarding the
18 status of the Consent Decree, including but not limited to, the possibility of extending the time to
19 install an upgraded, fully operational Treatment solution (Exhibit C or an equivalent or better
20 alternative) by an additional three (3) months.

21 **6.3** Within Drainage Area 1, storm water drains west toward the Electrical Yard, resulting in
22 discharge that is not currently sampled. Storm water runoff from the chip pile in the location north
23 of the scale, will be stopped by removing pavement from an area of suitable size to allow full
24 infiltration. This area will be created by removing pavement from an area approximately 3 feet
25 wide and the length of the fence line north of the scale, and backfilling with open graded gravel.
26 An additional infiltration area will be created in the low corner located west of the scale in the
27 same manner, suitable to allow full infiltration of storm water prior to discharge from the site. Both
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1 of these new infiltration areas will be added to the SWPPP as monitoring and potential sampling
2 points if necessary during heaving storms.

3 **6.4** Defendant shall ensure that all vehicle maintenance will be done under a roofed
4 structure.

5 **6.5** Defendant shall implement a chip rotation schedule such that no chips are left on-site for
6 longer than 12 months, and to remove heavily degraded chips from the bottom of the pile when
7 chips are loaded, rather than maintaining them for extended periods of time as an "operational
8 blanket" layer. Defendant has executed export contracts not available until recently, which allow
9 them to commit to this Operational BMP not previously possible for the startup operation.

10 **6.6** Defendant shall update the SWPPP in accordance with Paragraphs 6.1, through 6.5, and
11 shall update the SWPPP map to adequately represent proper drainage flows from all drainage areas
12 at the Chip Facility.

13 **SAMOA FACILITY:**

14 **6.7** Defendant shall remove and properly dispose of all boneyards, including but not limited
15 to, all oxidized iron associated with rusted former infrastructure of the former Planing Mill.
16 Defendant shall also tear down the wind damaged cooling shed and remove and properly dispose
17 of all metal and other materials associated with the tear down.

18 **6.8** Defendant shall identify and plug the numerous DIs in Drainage Area 1 and the former
19 Planing Mill area that are not identified in the current SWPPP map.

20 **6.9** Defendant shall demonstrate on-site storm water containment and discharge reduction
21 measures in the area immediately up-gradient of the SW-1 discharge sampling point. The
22 Defendant has established a storm water infiltration/retention area up-gradient of the SW-1
23 sampling point. Additional improvement in this area will be implemented to significantly reduce
24 the likelihood of off-site discharges. The SW-1 sampling point shall be repositioned to the east to
25 match the actual eastern property boundary alignment and an additional containment berm, which
26 will increase storm water capacity. A weir-notch discharge point will be installed in the berm. The
27 Defendant shall update the SWPPP to reflect these changes and monitor this location on an
28 ongoing basis to document that discharge does not leave the site during most rain events. This

1 location shall be subject to ongoing monitoring and photo documentation to confirm no discharge;
2 however, during rare occasions of extreme precipitation this point would be sampled in accordance
3 with Storm Water Permit requirements if off-site discharge occurs. Defendant shall include
4 monitoring and photo documentation with the documents provided to Baykeeper in accordance
5 with Paragraph 18 below.

6 **6.10** Defendant intends to utilize the full paved portion of Drainage Area 2 for log storage and
7 chipping. Defendant will install new asphalt berms to direct storm water discharge that does not
8 flow to SW-1 to un-paved vegetated infiltration areas. The updated SWPPP map will confirm and
9 identify all areas of log storage and wood chipping at the Samoa Facility.

10 **6.11** Defendant shall update the SWPPP in accordance with Paragraphs 6.7 through 6.10.

11 **7. Modification of BMPs.** Defendant shall not unilaterally abandon or modify any of the BMPs
12 described above unless necessary to maintain or maximize storm water system or BMP performance.
13 Defendant shall provide notice to Baykeeper within ten (10) business days of making the change, which
14 includes a description of the change and explanation of why the change was needed to improve or
15 maintain storm water quality or system performance. This notice requirement does not include normal
16 BMP maintenance, replacement or minor adjustments. Baykeeper shall provide comments regarding
17 Defendant's modifications or abandonment of any BMP at the Facilities, if any, within ten (10) days of
18 receipt. Any failure to comment on the proposed modifications by Baykeeper, shall not be deemed to
19 constitute agreement with the proposals or be deemed to construe a waiver of any of Baykeeper's rights
20 or remedies under this Consent Decree. Consultation pursuant to this section shall not constitute an
21 action plan as described in Paragraph 14 of this Consent Decree, or be deemed to waive any of
22 Defendant's obligations with respect to the Action Plan.

23 **8. Visual Observations.** During the life of this Consent Decree, Defendant shall conduct visual
24 observations at each discharge location during every Qualifying Storm Event(s) ("QSE")³ that produces
25 a discharge that occurs during scheduled operating hours at each of the Facilities.

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27 ³ "Qualifying Storm Events" under the Storm Water Permit are those events in which (i) the samples taken are preceded
28 by at least three (3) working days during which no storm water discharges from the Facility have occurred; (ii) the
samples are collected within the first hour that flow is observed; and (iii) the samples are collected during scheduled
facility operating hours.

1 **9. Employee Training Program.** Defendant shall develop and implement an employee training
2 and reporting program that includes: 1) annual meetings of the Storm Water Pollution Prevention Team,
3 held within twenty (20) days between prior to the start of the Wet Seasons (October 1), and again within
4 the month of February, so as to ensure the capturing of the first event and subsequent storm events in its
5 sampling analysis as well as to ensure that the monthly Wet Season visual monitoring is properly
6 conducted and reported in the Annual Report; 2) Defendant shall train all employees responsible for
7 SWPPP implementation and/or monitoring on the BMPs included in this Consent Decree and the
8 SWPPP to ensure that BMPs are implemented effectively and on schedule and structural BMPs are
9 maintained properly. Defendant shall train individual employees on their specific responsibilities in
10 implementing BMPs. The training must include proper handling (collection, storage and disposal) of all
11 potential pollutant sources at the Facilities; and 3) Defendant shall train all employees at the Facilities on
12 the Storm Water Permit's prohibition of non-storm water discharges, so that employees know what non-
13 storm water discharges are, that non-storm water discharges can result from improper surface washing
14 or dust control methods, and how to detect and prevent non-storm water discharges.

15 **10. Storm Water Pollution Prevention Plan.** Within sixty (60) days of the Effective Date,
16 Defendant shall amend the Facilities' SWPPPs to incorporate the requirements and BMPs set forth in
17 Section X of the Storm Water Permit and Paragraphs 6.1 through 6.11 of this Consent Decree, and
18 submit the updated SWPPPs to Baykeeper within ten (10) business days thereafter. Baykeeper shall
19 have thirty (30) days from receipt of an amended SWPPP to propose any changes to the SWPPP. Within
20 thirty (30) days of notification by Baykeeper of any proposed changes to a SWPPP, Defendant shall
21 make all of Baykeeper's changes to the amended SWPPP, or shall justify in writing why any comment is
22 not incorporated. Defendant shall not be obligated to incorporate any of the SWPPP changes Baykeeper
23 may recommend (subject to dispute resolution in Paragraphs 23 and 24), but shall give good faith
24 consideration to those measures, and provide a written explanation as to why Defendant declined to
25 implement those additional pollution prevention measures. Upon request by Baykeeper, Defendant
26 agrees to meet and confer in good faith (at the Facility requiring the SWPPP changes, if requested by
27 Baykeeper) regarding the contents and sufficiency of the SWPPP. Compliance with the SWPPP, as
28 amended in accordance with this Paragraph, shall, at all times, be a requirement of this Consent Decree.

1 Defendant shall revise the Facilities' SWPPPs if there are any material changes in the Facilities'
2 operations, including, but not limited to, changes to storm water discharge points or BMPs. These
3 SWPPP revisions shall occur within thirty (30) days of the changes in operations.

4 **11. Future Storm Water Pollution Prevention Plan Amendments.** Defendant shall provide
5 Baykeeper with a copy of any amendments to either of the Facilities' SWPPPs made during the Term of
6 the Consent Decree within ten (10) days of such amendment.

7 **12. Sampling Frequency and Performance Standards.** During the 2017-2018 reporting year,
8 Defendant shall collect and analyze samples from six (6) QSE from each of the Facilities' discharge
9 locations, identified in each of the Facilities' SWPPPs, provided that many QSE discharges have
10 occurred. If sampling test results from the six (6) sampled QSE at each of the Facilities in the 2017-2018
11 Reporting Year exceed the Table 1 Parameter Limits less than twice for the same parameter at either
12 Facility, that Facility may elect to only collect and analyze samples from four (4) QSE in the 2018-2019
13 Reporting Year, from the Sample Points identified in the Facilities' SWPPPs, under this Consent
14 Decree. If two (2) or more exceedances of the same parameter at either of the Facilities are reported, that
15 Facility will collect and analyze samples from six (6) QSE, during the 2018-2019 Reporting Year.
16 During the 2019-2020 and 2020-2021 reporting years, Defendant may elect to only collect and analyze
17 samples from four (4) QSE from each of the Facilities, at all sampling points identified in each of the
18 Facilities' SWPPPs, under this Consent Decree. If Defendant receives storm water sampling data
19 demonstrating an exceedance of a Table 1 Parameter Limit at either of the Facilities during the term of
20 this Consent Decree, Defendant shall provide Baykeeper with written notice of the exceedance within
21 (10) days. If Defendant receives storm water sampling data demonstrating two or more exceedances of
22 the same Table 1 Parameter Limit at either of the Facilities during a single Reporting Year under this
23 Consent Decree, Defendant shall provide Baykeeper with an Action Plan for that Facility in compliance
24 with the "Action Plan" requirements set forth below in Paragraph 14 of this Consent Decree.

25 **13. Sampling Parameters.** Each of the storm water samples collected pursuant to Paragraph 12 of
26 this Consent Decree shall be analyzed for each of the constituents listed in Table 1. With the exception
27 of pH testing, all storm water analysis shall be done by a laboratory accredited by the State of California.
28 Samples collected from each of the Facilities shall be delivered to the laboratory as soon as possible to
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1 ensure that sample “hold time” is not exceeded. Analytical methods used by the laboratory shall be
2 adequate to detect the individual constituents at or below the limits specified in Table 1. Sampling
3 results shall be provided to Baykeeper within fourteen (14) days of Defendant’s receipt of the laboratory
4 report from each sampling event pursuant to the Notice provisions of Paragraph 39 herein.

5 **14. Action Plan.** Defendant agrees to submit an Action Plan: 1) if required pursuant to Paragraphs 5
6 and 12, or if Defendant fails to collect and analyze samples from the number of QSE required in
7 Paragraph 12 above, or if Defendant fails to comply with any other requirements of the Storm Water
8 Permit, that complies with the following requirements: Defendant shall prepare a detailed, written
9 statement discussing and describing the exceedances or failure to collect and analyze samples from the
10 required number of QSE, the possible cause(s) and/or source of the exceedances or failure(s), additional
11 measures that are designed to address and eliminate the problem and future exceedances or failure(s),
12 and an expeditious time line for implementing said additional measures (the “Action Plan”). The Action
13 Plan shall be provided to Baykeeper no later than thirty (30) days after Defendant’s receipt of the sample
14 results causing two exceedances of the same Table 1 Parameter Limit within a single Reporting Year, or
15 failure to sample the required number of QSE at the close of any reporting year.

16 **15. Additional Measures.** Such additional measures under an Action Plan, to the extent reasonably
17 feasible, shall be implemented within sixty (60) days after the due date of the Action Plan. Within thirty
18 (30) days of implementation, the Facilities’ SWPPPs shall be amended to include all additional BMP
19 measures designated in the Action Plan.

20 **16. Baykeeper Review of Action Plan(s).** Baykeeper may review and comment on an Action Plan
21 and suggest any additional pollution prevention measures it believes are appropriate within fifteen (15)
22 days of receipt of any Action Plan under this Consent Decree; however, Baykeeper’s failure to do so
23 shall not be deemed to constitute agreement with the proposals set forth in the Action Plan. Defendant
24 shall not be obligated to perform any of the pollution prevention measures Baykeeper may recommend
25 (subject to dispute resolution in Paragraphs 23 and 24), but shall give good faith consideration to those
26 measures, and provide a written explanation as to why Defendant declined to implement those additional
27 pollution prevention measures. Upon request by Baykeeper, Defendant agrees to meet and confer in
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1 good faith (at the Facility requiring the Action Plan, if requested by Baykeeper) regarding the contents
2 and sufficiency of the Action Plan.

3 **17. Site Inspections.** In addition to any site inspections conducted as part of the settlement process
4 and the meet-and-confer process concerning an Action Plan as set forth above, Defendant shall permit
5 representatives of Baykeeper to perform up to two (2) physical inspections at each of the Facilities
6 during the term of this Agreement. These inspections may be performed by Baykeeper's counsel and
7 consultants and may include sampling, photographing, and/or videotaping. All sampling shall be
8 conducted by a qualified sampler, with a split sample provided to both Baykeeper and Defendant at the
9 time of sampling. Baykeeper shall provide Defendant with a copy of all sampling reports, photographs
10 and/or video within a reasonable time after the site inspection, not to exceed fourteen (14) days after
11 Baykeeper's receipt of any sampling reports from split samples, and seven (7) days after the site
12 inspection, for photographs and/or video. Baykeeper shall provide at least five (5) business days advance
13 notice of such physical inspection, except that Defendant shall have the right to deny access if
14 circumstances would make the inspection unduly burdensome and pose significant interference with
15 business operations or any party/attorney, or the safety of individuals. In such case, Defendant shall
16 specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by
17 Baykeeper may proceed. Defendant shall document alterations to each of the Facilities' conditions
18 related to storm water management during the period between receiving Baykeeper's initial advance
19 notice and the start of Baykeeper's inspection that Defendant would not otherwise have made but for
20 receiving notice of Baykeeper's request to conduct physical inspections of the Facilities. The
21 documentation shall include the date the alterations related to storm water management were planned
22 and/or scheduled, the date of the issuance of any purchase order and/or maintenance order, if any, for the
23 alterations, and the date the alterations were implemented. Nothing herein shall be construed to prevent
24 Defendant from continuing to implement any BMPs identified in the SWPPP during the period prior to
25 an inspection by Baykeeper or at any time.

26 **18. Defendant Communications with Regional and State Boards.** During the Term of this
27 Consent Decree, Defendant shall provide Baykeeper with copies of all documents and official
28 communications submitted to the Regional Board or the State Board concerning BMPs, storm water or
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1 storm water discharges from the Facilities, or compliance with Storm Water Permit or the Clean Water
2 Act. These documents and official communications shall include, but are not limited to, all documents
3 and reports submitted to the Regional Board and/or State Board as required by the Storm Water Permit,
4 and all official correspondence between the Regional Board or the State Board and the Defendant or
5 their agents. Such documents and reports shall be provided to Baykeeper pursuant to the Notice
6 provisions of Paragraph 39 herein contemporaneously with Defendant's transmission of said documents
7 to the Regional Board or the State Board.

8 **MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

9 **19. Mitigation.** As mitigation of the Clean Water Act violations alleged in Baykeeper's Complaint,
10 Defendant agrees to pay the sum of Thirty-Five Thousand Dollars (\$35,000) to Friends of the Dunes for
11 projects to improve the environmental habitat and/or water quality in Humboldt Bay or the Humboldt
12 Bay Watershed. The mitigation payment shall be made directly to Friends of the Dunes and sent to:
13 Friends of the Dunes, 220 Stamps Ln, Arcata, CA 95521. Friends of the Dunes shall provide notice to
14 the Parties within ten (10) days of a decision upon when and how the funds will be applied to better the
15 environmental habitat, ecosystem, and/or water quality, in Humboldt Bay or the Humboldt Bay
16 Watershed. The payment shall be sent within seven (7) calendar days of the Effective Date.

17 **20. Baykeeper's Litigation Costs.** To partially reimburse Baykeeper for its investigation fees and
18 costs, expert/consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a result of
19 investigating and filing the lawsuit, and negotiating this Consent Decree, Defendant shall pay a total of
20 Eighty Thousand Dollars (\$80,000). The payment shall be made within thirty (30) days of the Effective
21 Date. The payment shall be made via wire transfer or check, made payable to: "ATA LAW GROUP"
22 and delivered by overnight delivery, unless payment via wire transfer, to: ATA Law Group, 828 San
23 Pablo Ave., Ste. 115B, Albany, CA 94706.

24 **21. Compliance Monitoring and Oversight.** Defendant agrees to partially defray Baykeeper's
25 reasonable investigative, expert, consultant and attorneys' fees and costs associated with monitoring of
26 Defendant's compliance with this Consent Decree in the amount of Fourteen Thousand Dollars
27 (\$14,000). Payment shall be made within ten (10) days after the Effective Date. Compliance monitoring
28 activities may include, but shall not be limited to, reasonable investigative, expert, consultant and

1 attorneys' fees and costs, site inspections, review of water quality sampling reports, review of annual
2 reports, discussions with representatives of Defendant concerning any Action Plan(s) referenced above,
3 potential changes to compliance sampling and analysis, and compliance-related activities. The payment
4 shall be made via wire transfer or check, made payable to: "ATA LAW GROUP" and delivered by
5 overnight delivery, unless payment via wire transfer, to: ATA Law Group, 828 San Pablo Ave., Ste.
6 115B, Albany, CA 94706.

7 **DISPUTE RESOLUTION**

8 **22. Jurisdiction of the Court.** The Court shall retain jurisdiction over this matter for the life of the
9 Consent Decree for the purposes of enforcing its terms and conditions, and adjudicating all disputes
10 among the Settling Parties that may arise under the provisions of this Consent Decree. The Court shall
11 have the authority to enforce this Consent Decree with all available legal and equitable remedies,
12 including contempt. Within five (5) days of the Effective Date, the Parties shall file with the Court a
13 Stipulation and Order providing that the Complaint and all claims therein shall be dismissed with
14 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

15 **23. Meet and Confer.** If a dispute under this Consent Decree arises or the Parties believe that a
16 breach of this Consent Decree has occurred, the Settling Parties agree to meet and confer:

17 **23.1** A Party to this Consent Decree shall invoke the dispute resolution procedures of this
18 Section by notifying the other Parties of the matter(s) in dispute. The Parties shall schedule a meet
19 and confer (either telephonically or in person) within ten (10) days from the date of the notice. The
20 Parties may elect to extend this time in an effort to resolve the dispute without mediation or court
21 intervention.

22 **23.2** If the Parties fail to meet and confer, or cannot resolve a dispute through the informal
23 meet and confer process, after at least seven (7) days have passed after the meet-and-confer
24 occurred or should have occurred, either Party shall be entitled to all rights and remedies under the
25 law, including filing a motion with the District Court of California, Northern District. The Parties
26 shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall
27 be awarded pursuant to the provisions set forth in Section 505(d) of the Clean Water Act.
28

1 **23.3** The Parties shall be entitled to seek fees and costs incurred in any such dispute resolution
2 procedure or action, to remedy the alleged breach(es) of the Consent Decree, pursuant to the
3 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §§ 1319, and 1365(d), and
4 applicable case law interpreting such provisions.

5 **MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

6 **24. Baykeeper's Waiver and Release.** Baykeeper, on its own behalf and on behalf of its officers,
7 directors, employees, parents, subsidiaries, and each of their successors and assigns releases Defendant,
8 their officers, directors, employees, members, parents, subsidiaries, affiliates, successors or assigns,
9 agents, attorneys and other representatives, from and waives all claims raised in the 60-Day Notice
10 and/or the Complaint, including all claims for fees (including fees of attorneys, experts, and others),
11 costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters
12 included in the 60-Day Notice and/or the Complaint up to the Effective Date.

13 **25. Defendant's Waiver and Release of Baykeeper.** Defendant, on their own behalf and on behalf
14 of their officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or
15 assigns release Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and
16 affiliates, and each of their successors and assigns from, and waive all claims which arise from or
17 pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of
18 attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could
19 have been claimed for matters included in the 60-Day Notice and/or the Complaint up to the Effective
20 Date.

21 **MISCELLANEOUS PROVISIONS**

22 **26. No Admission of Liability.** Neither this Consent Decree, the implementation of additional
23 BMPs or any payment pursuant to the Consent Decree shall constitute or be construed as a finding,
24 admission, or acknowledgement of any fact, law, rule, or regulation. Defendant maintain and reserve all
25 defenses they may have to any alleged violations that may be raised in the future.

26 **27. Submission of Consent Decree to DOJ.** After agreement of the Parties to this proposed Consent
27 Decree, Baykeeper will submit this Consent Decree to the United States Department of Justice and the
28 national and Region IX offices of the United States Environmental Protection Agency for the statutory
[Proposed] CONSENT DECREE

1 review period pursuant to 33 U.S.C. § 1365(c) of at least 45 days prior to the submittal of this Consent
2 Decree to the Court for entry. In the event that the Federal Agencies object to entry of this Consent
3 Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal
4 Agencies within thirty (30) days.

5 **28. Early Termination.** If Defendant should attempt to cease industrial operations at either of the
6 Facilities and file a Notice of Termination (“NOT”) under the Industrial Storm Water Permit prior to the
7 termination date of this Consent Decree, Defendant shall send Baykeeper a copy of the proposed NOT
8 thirty (30) days prior to its submittal to the Regional Water Board. Baykeeper reserves all rights to
9 comment on the proposed NOT and take any necessary action before the Regional Water Board to
10 dispute the validity of the NOT. Should the NOT be approved by the Regional Water Board, within ten
11 (10) days of the Regional Water Board’s approval Defendant shall notify Baykeeper in writing of the
12 approval and remit all outstanding payments, including stipulated payments, to Baykeeper. In the event
13 a new successor or assign continues industrial operations at the site and assumes responsibility for
14 implementation of this Consent Decree pursuant to Paragraph 38, Defendant shall notify Baykeeper
15 within ten (10) days of the transition.

16 **29. Execution in Counterparts and Signatures.** The Consent Decree may be executed in one of
17 more counterparts, which, taken together, shall constitute one original document. The Parties’ signatures
18 to this Consent Decree may be electronic or original, and whether transmitted by courier, mail, email or
19 facsimile, shall be deemed binding.

20 **30. Construction.** The language in all parts of this Consent Decree shall be construed according to
21 its plain and ordinary meaning, except as to those terms defined in the Storm Water Permit, the Clean
22 Water Act, or specifically herein. The captions and Paragraph headings used in this Consent Decree are
23 for reference only and shall not affect the construction of this Consent Decree.

24 **31. Authority to Sign.** The undersigned representatives for Baykeeper and Defendant certify that
25 he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of
26 this Consent Decree, which have been read, understood and agreed to.

1 **32. Integrated Consent Decree.** All agreements, covenants, representations and warranties, express
2 or implied, oral or written, of the Parties concerning the subject matter of this Consent Decree are
3 contained herein.

4 **33. Severability.** In the event that any of the provisions of this Consent Decree are held by a court to
5 be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

6 **34. Choice of Law.** This Consent Decree shall be governed by the laws of the United States or,
7 where applicable, the laws of the State of California.

8 **35. Full Settlement.** This Consent Decree constitutes a full and final settlement of this matter.

9 **36. Negotiated Agreement.** The Parties have negotiated this Consent Decree, and agree that it shall
10 not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared
11 this Consent Decree, and any uncertainty and ambiguity shall not be interpreted against any one party.

12 **37. Modification of the Agreement.** This Consent Decree, and any provisions herein, may not be
13 changed, waived, or discharged unless by a written instrument signed by each of the Parties.

14 **38. Assignment.** Subject only to the express restrictions contained in this Consent Decree, all of the
15 rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be
16 binding upon the Parties, and their successors and assigns.

17 **39. Notice.** Unless otherwise stipulated to by the receiving party, any notices or documents required
18 or provided for by this Consent Agreement or related thereto that are to be provided to Baykeeper
19 pursuant to this Consent Agreement shall be sent via electronic mail to the email addresses listed below:

20
21 Jennifer Kalt
22 Director, Humboldt Baykeeper
23 600 F Street, Suite 3 #810,
24 Arcata, CA 95521
25 jkalt@humboldtbaykeeper.org

26 Anthony M. Barnes
27 Jason R. Flanders
28 Aqua Terra Aeris Law Group LLP
 828 San Pablo Ave., Ste. 115B
 Albany, CA 94706
 Phone: (415) 326-3173
 Email: amb@atalawgroup.com

29 Any notices or documents required or provided for by this Consent Agreement or related thereto
30 that are to be provided to Defendant pursuant to this Consent Agreement shall be sent via electronic mail
31 to the email addresses listed below:

1
2 Neal Ewald
3 Senior Vice President
4 Green Diamond Resource Company
5 California Redwood Company
6 P.O. Box 68
7 Korb, CA 95550
8 (707) 668-4400
9 Email: newald@greendiamond.com

Christopher J. Carr
Morrison Foerster LLP
425 Market St # 30
San Francisco, CA 94105
Phone: (415) 268-7246
Email: ccarr@mofo.com

Each Party shall promptly notify all other Parties of any change in the above-listed contact information.

40. **Force Majeure.** No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any circumstances beyond the Party's reasonable control, including, without limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this Paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the Force Majeure.

The Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the Court for its approval and entry as a final judgment.

APPROVED AS TO CONTENT

Dated: 7/5, 2017

By: Jennifer Kall
Jennifer Kall, Director
Humboldt Baykeeper


Dated: 7/6, 2017

By: Neal Ewald
Neal Ewald, Senior Vice President
California Redwood Company

1 APPROVED AS TO FORM

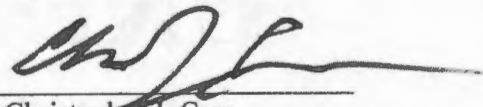
AQUA TERRA AERIS LAW GROUP

2
3 Dated: July 6, 2017, 2017

By: 
Anthony M. Barnes
Attorneys for Plaintiff

4
5
6
7 Dated: July 10, 2017

MORRISON FOERSTER LLP

By: 
Christopher J. Carr
Attorneys for Defendant

8
9
10
11 Good cause appearing, IT IS SO ORDERED.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 Dated: _____, 2017

Honorable Thelton Henderson

EXHIBIT A



September 27, 2016

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

California Redwood Company
Agent for Service of Process CT
Corporation System
818 W 7th Street, STE 930
Los Angeles, CA 90017

California Redwood Company
Current President or CEO
1301 Fifth Avenue, STE 2700
Seattle, WA 98101

California Redwood Company
Otto van Emmerik – Operations Manager
P.O. Box 1089
Arcata, CA 95518-1089

California Redwood Company
Rob Legg – Supervisor
P.O. Box 1089
Arcata, CA 95518-1089

**RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL
WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§
1251 *et seq.*)**

Dear California Redwood Company ("CRC"):

This firm represents Humboldt Baykeeper, a California non-profit association, in regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at two facilities under your control in or near the unincorporated community of Samoa, California: (1) CRC Samoa Chip Facility, based upon information available to Humboldt Baykeeper, owned and operated by California Redwood Company with waste discharge identification number 1 12I023751; and (2) CRC Samoa Facility based upon information available to Humboldt Baykeeper, owned and operated by California Redwood Company, with waste discharge identification number 1 12I020584 (collectively, the "CRC Facilities"). This letter is being sent to you as the responsible owners, officers, and/or operators of the CRC Facilities. Unless otherwise noted CRC's owners, operators, managers and persons legally responsible for the Facilities, shall hereinafter be collectively referred to as the "Owners/Operators." Humboldt Baykeeper is a non-profit association dedicated to safeguarding coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community, including the waters into which the Facilities discharge polluted storm water.

The Owners/Operators of the CRC Facilities are in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 *et seq.*

California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("General Permit"), Water Quality Order No. 97-03-DWQ ("1997 General Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 General Permit").¹

The 1997 General Permit was in effect between 1997 and June 30, 2015, and the 2015 General Permit went into effect on July 1, 2015. As will be explained below, the 2015 General Permit includes many of the same fundamental requirements, and implements many of the same statutory requirements, as the 1997 General Permit. Violations of the General Permit constitute ongoing violations for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the Owner/Operators of the Facilities to penalties of up to \$37,500 per day, per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violation and Intent to File Suit. In addition to civil penalties, Humboldt Baykeeper will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) of the Act (33 U.S.C. §§ 1365(a), (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. See 40 C.F.R. 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facilities. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, Humboldt Baykeeper intends to file suit under Section 505(a) of the Act (33 U.S.C. § 1365(a)) in federal court against California Redwood Co. for violations of the Act and the General Permit.

I. Background

A. The Clean Water Act

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251.

¹ The Owner/Operators submitted an NOI for each of the CRC Facilities to comply with the General Permit on or about May 15, 2015.

The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Baykeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env'tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act's permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342.

B. California's General Permit for Storm Water Discharges Associated with Industrial Activities

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which Humboldt Baykeeper refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, Humboldt Baykeeper refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA.

The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements.

C. The CRC Samoa Chip Facility

The CRC Samoa Chip Facility is an approximately 16-acre site that is used as a storage and shipping facility for wood chips that are transported overseas, located at 405 Bay Street, Fairhaven, CA 95564 (upon information and belief, within Humboldt County Assessor's Parcel Numbers 401-122-006 and -008). A portion of the site includes the Humboldt Bay shoreline. The CRC Samoa Chip Facility consists of at least the following operational areas:

- Facility entrances, office, scale, lab, transformer, and parking areas;
- Wood chip unloading ramps, and chip stockpile areas;
- Wood chip reclaim area and transfer conveyor to the onsite dock;
- Wood chip transfer from conveyor to blower and through boom into ship;
- The northern truck dump and chip yard;
- The southern truck dump and chip yard;
- Septic tanks and leachfield systems for the restrooms;
- Laboratory used to determine mass and quality of the delivered wood chips;
- Equipment maintenance and cleaning areas; and
- Aboveground storage tank (AST), fueling facility, and washdown area.

Upon information and belief, the CRC Samoa Chip Facility obtains wood chips from lumber mills and large chipping operations located in Northern California. Chips are transported to the CRC Samoa Chip Facility by trucks, and are then dumped and stored in large stockpiles until front-end loaders transfer the chips to a conveyor out to the loading dock, located over Humboldt Bay, where a blower moves the chips onto cargo ship via tower and boom. The main entrance to the facility is from the west and provides access from Bay Street. Trucks, trailers, heavy equipment, employees, and vendors use this main entrance. Operational activities conducted at this facility are sources of a variety of stormwater pollutants, and include, but are not limited to, fueling activities, machinery operations, heavy equipment operations, equipment and machinery maintenance and cleaning, and wood chip transfer and stockpiling activities. Septic tanks and leachfield systems onsite can also lead to stormwater pollution. The CRC Samoa Chip Facility operates 5 days a week, from at least 6:00 a.m. to 6:00 p.m.

The industrial activities of the CRC Samoa Chip Facility fall under Standard Industrial Classification ("SIC") Code 2421 – Sawmills and Planing Mills, General, described in the CRC Samoa Chip Facility SWPPP as storing wood chips produced at a mill or off site.

The CRC Samoa Chip Facility collects and discharges storm water associated with industrial activities pursuant to the General Permit through, at a minimum, the following discharge locations identified in the CRC Samoa Chip Facility SWPPP: Drainage Areas 1, 2, 3, 4, 5 and 6. Sampling locations are situated in Drainage Areas 3 and 4, at SW-1N and SW-1S respectively. These discharges enter Humboldt Bay. Humboldt Bay is a water of the United States within the meaning of the CWA.

The General Permit requires the CRC Samoa Chip Facility to analyze storm water samples for Total Suspended Solids ("TSS"), pH, and Oil and Grease ("O&G"). 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Code 2421 must also analyze storm water samples for chemical oxygen demand ("COD") and zinc ("Zn"). 1997 General Permit, Tables 1-2; 2015 General Permit Tables 1-2.

D. The CRC Samoa Facility

The CRC Samoa Facility is an approximately 57.5-acre, primarily used to store logs, with wood chippers occasionally used onsite, located at #1 Jimmy Smith Drive south of the community of Samoa in Humboldt County, CA 95564 (upon information and belief, located within Humboldt County Assessor's parcel numbers 401-112-013, and 401-031-054 and -061). A portion of the site includes the Humboldt Bay shoreline. The CRC Samoa Facility consists of the following operational areas:

- Facility entrance, access road, and parking areas;
- Former office and break room;
- Log deck
- Log storage and chipping yard;
- Dry Kilns and boiler (not operationa);
- Septic tank and leachfield
- Fire pump and diesel tank area.

The CRC Samoa Facility is a former sawmill facility, previously in operation for approximately 100 years. Jimmy Smith Drive is the main entrance road into the CRC Samoa Facility which connected to an access road with several entrances into the log storage areas. Log trucks, service trucks and vehicles, and employee vehicles use this access road and truck and vehicle parking is near the chipping operations area. Logs are trucked in and off-loaded using a log loader, and then stored until needed. When needed, the logs are either loaded on log trucks or chipped and transported offsite. The fire water tank, 270-gallon diesel tank, and fire pump have remained operational, and are in use. CRC is the operator of the water tank and pump, with water supplied to the aboveground steel tank by Humboldt Bay Municipal Water District. Operational activities conducted at this facility are sources of a variety of stormwater pollutants, and include, but are not limited to, fueling activities, machinery operations, log chipping, heavy

equipment operations, equipment and machinery maintenance and cleaning, log and wood chip transfer, and stockpiling activities. The CRC Samoa Facility operates 5 days a week, from at least 6:00 a.m. to 6:00 p.m.

The industrial activities of, or at, the CRC Samoa Facility fall under Standard Industrial Classification ("SIC") Code 2411 – Logging, described in the CRC Samoa Facility SWPPP as portable chipping operations and log storage.

The CRC Samoa Facility collects and discharges storm water associated with industrial activities pursuant to the General Permit through at least the following discharge locations identified in the CRC Samoa Facility SWPPP: Drainage Areas 1 and 2. Upon information and belief, the only sampling location, SW-1, is situated in Drainage Area 2. These discharges enter Humboldt Bay. Humboldt Bay is a water of the United States within the meaning of the CWA.

The General Permit requires the SF to analyze storm water samples for TSS, pH, and Oil and Grease. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. The CRC Samoa Facility has also sampled Iron ("Fe") and received an Fe exceedance letter from the Regional Board in 2014.

II. The CRC Facilities' Violations of the Act and General Permit

Based on its review of available public documents, Humboldt Baykeeper is informed and believes that CRC is in ongoing violation of both the substantive and procedural requirements of the CWA, and the Individual and General Permits. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, CRC is subject to penalties for violations of the Act since September 27, 2011.

Contaminated storm water and non-storm water discharges can and must be controlled for the Humboldt County and North Coastal Basin ecosystem to regain and maintain its health. Information available to Humboldt Baykeeper indicates that certain industrial operations at the CRC Facilities are conducted outdoors without adequate cover or containment to prevent non-storm water and storm water exposure to pollutant sources or direct discharge of pollutants via air deposition into surface waters.

A. The CRC Facilities Discharge Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations.

CRC's storm water sampling results provide conclusive evidence of CRC's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the General Permit are deemed

“conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

B. The CRC Facilities Discharge Non-Storm Water Containing Pollutants in Violation of the General Permit’s Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations.

Information available to Humboldt Baykeeper suggests that the CRC Facilities discharge quantities of unauthorized non-storm water, including but not limited to, water used to wash wood and logs, trucks and other vehicles, in violation of the General Permit’s discharge prohibitions, receiving water limitations and effluent limitations.

C. The CRC Facilities Aerial Deposition Containing Pollutants Enters Surface Waters Without NPDES Coverage.

Pollution entering surface waters via air deposition is also recognized as a significant cause of degradation of water quality. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. Information available to Humboldt Baykeeper indicates that outdoor industrial operations at the CRC Facilities create dust and particulate matter from, as examples only, wood chipping, wood chip transfer, and high-volume truck and other vehicle traffic. These activities lack containment or secondary containment, and have been ongoing since at least 2011. This dust and particulate matter migrates to surface waters of Humboldt County.

D. Applicable Water Quality Standards

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board’s Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit’s Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the

discharger will make to its current storm water best management practices (“BMPs”) in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule (“CTR”) is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 2015 U.S. Dist. LEXIS 108314, *21 (E.D. Cal. 2015) CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes a numeric limit for at least one of the pollutants discharged by the CRC Facilities: Zinc – 0.12 mg/L (maximum concentration).

The *Water Quality Control Plan for the North Coast Region (May 2011)* (“Basin Plan”) also sets forth water quality standards and prohibitions applicable to CRC’s stormwater discharges. The Basin Plan identifies present and potential beneficial uses for Humboldt Bay, including municipal and domestic supply, industrial service supply, navigation, commercial and sport fishing, preservation of rare and endangered species, wildlife habitat, spawning reproduction and/or early development, marine habitat (“MAR”), cold freshwater habitat (“COLD”), estuarine habitat, aquaculture, migration, shellfish harvesting, and contact and non-contact water recreation.

E. Applicable Effluent Limitations

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable (“BAT”) for toxic and nonconventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by CRC: Total Suspended Solids – 100 mg/L; Chemical Oxygen Demand – 120 mg/L; Zinc – 0.117 mg/L; Iron – 1 mg/L, and pH – 6.0-9.0 SU. However, the Basin Plan stipulates that pH shall not be depressed below 6.5 nor raised above 8.5, and changes in normal ambient pH levels shall not exceed 0.2 units in waters with a designated

marine (MAR) beneficial use, nor 0.5 units within the range specified above in fresh waters designated COLD.

F. The CRC Facilities' Storm Water Sample Results

The following discharges of pollutants from the CRC Facilities have violated the discharge prohibitions, receiving water limitations, and effluent limitations of the permit. Exceedance letters from the Regional Board to the CRC Facilities dated October 17, 2014 suggest that further testing results will be made available to Humboldt Baykeeper, and additional exceedances will be identified.

i. Discharge of Storm Water Containing pH Levels in Excess of the Applicable EPA Benchmark Value

Date	Facility	Discharge Point	Parameter	EPA Benchmark	Basin Plan Limits	Result (s.u.)
9/30/2013	Samoa Chip	SW-1S	pH	6.0-9.0	6.5-8.5	5.67
12/3/2015	Samoa	SW-1	pH	6.0-9.0	6.5-8.5	4.0
12/3/2015	Samoa Chip	SW-1N	pH	6.0-9.0	6.5-8.5	3.0
12/3/2015	Samoa Chip	SW-1S	pH	6.0-9.0	6.5-8.5	5.0
1/29/2016	Samoa	SW-1	pH	6.0-9.0	6.5-8.5	3.0
1/29/2016	Samoa Chip	SW-1N	pH	6.0-9.0	6.5-8.5	4.5
1/29/2016	Samoa Chip	SW-1S	pH	6.0-9.0	6.5-8.5	5.0

ii. Discharges of Storm Water With Chemical Oxygen Demand (COD) at Concentrations at or in Excess of Applicable EPA Benchmark Values

Date	Facility	Discharge Point	Parameter	EPA Benchmark (mg/L)	Result (mg/L)
12/3/2015	Samoa	SW-1	COD	120	1100
12/3/2015	Samoa Chip	SW-1S	COD	120	120
1/29/2016	Samoa Chip	SW-1S	COD	120	120
1/29/2016	Samoa	SW-1	COD	120	190

iii. Discharges of Storm Water With Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Values

Date	Facility	Discharge Point	Parameter	EPA Benchmark (mg/L)	Result (mg/L)
12/3/2015	Samoa	SW-1	TSS	100	220

iv. Discharges of Storm Water With Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Values

Date	Facility	Discharge Point	Parameter	EPA Benchmark (mg/L)	Result (mg/L)
2/2/2014	Samoa	Storm Channel Location D2	Fe	1.0	2.8
2/8/2014	Samoa	Storm Channel Location D2	Fe	1.0	1.9

v. The CRC Facilities' Sample Results Are Evidence of Violations of the General Permit

The CRC Facilities sample results demonstrate violations of the General Permit's discharge prohibitions, receiving water limitations, and effluent limitations set forth above. Humboldt Baykeeper is informed and believes that CRC has known that its storm water contains pollutants at levels exceeding General Permit standards since at least September 27, 2011.

Humboldt Baykeeper alleges that such violations occur each time storm water discharges from the Facilities. Attachment A hereto, sets forth the specific rain dates on which Humboldt Baykeeper alleges that CRC has discharged storm water containing impermissible levels of TSS, Fe, COD, and pH in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

G. The Owners/Operators of the CRC Facilities Have Failed to Implement BAT and BCT

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. See 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

CRC has failed to implement the minimum BMPs at the CRC Facilities required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. 1997 General Permit, Sections A.8.a(i-x); 2015 General Permit, Sections X.H.1(a-g).

CRC has further failed to implement advanced BMPs at the CRC Facilities necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facilities in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facilities every day since at least September 27, 2011.

H. The Owners/Operators of the Facilities Have Failed to Develop and Implement an Adequate Storm Water Pollution Plan

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual

comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

Humboldt Baykeeper's investigation indicates that CRC has been operating the CRC Facilities with inadequately developed or implemented SWPPPs in violation of General Permit requirements. CRC has failed to evaluate the effectiveness of its BMPs and to revise the CRC Facilities' SWPPPs as necessary, resulting in the CRC Facilities' numerous effluent limitation violations. Further, the Owners/Operators of the CRC Facilities are not sampling at each discharge location identified in the SWPPP, or testing for all required parameters considering the industrial activity and the site.

Each day the Owners/Operators failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. The Owners/Operators have been in violation of these requirements at the Facilities every day since at least September 27, 2011.

III. Persons Responsible for the Violations

Humboldt Baykeeper puts CRC on notice that it is the entity responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, Humboldt Baykeeper puts CRC on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party

The name, address, and telephone number of the noticing party is as follows:

Jennifer Kalt, Director
Humboldt Baykeeper
1385 Eighth Street, Suite 228
Arcata, CA 95521
(707) 825 1020
www.humboldtbykeeper.org



V. Counsel

Humboldt Baykeeper has retained legal counsel to represent it in this matter.
Please direct all communications to:

Jason R. Flanders
Anthony M. Barnes
AQUA TERRA AERIS LAW GROUP
828 San Pablo Ave
Albany, CA 94706
(415) 326 3173
amb@atalawgroup.com

VI. Conclusion

Humboldt Baykeeper believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against California Redwood Co and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jason R. Flanders", written over a horizontal line.

Jason R. Flanders
Anthony M. Barnes
ATA Law Group
Counsel for Humboldt Baykeeper



SERVICE LIST

VIA CERTIFIED MAIL

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Alexis Straus, Acting Regional
Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Matthias St John, Executive Officer
North Coast Regional Water Quality
Control Board
5500 Skyline Blvd, Ste A
Santa Rosa, CA 95403

EXHIBIT A

Rain Data from EUREKA WEATHER FORECAST OFFICE, WOODLEY ISLAND, CA US

GHCND: USW00024213

9-25-2011 - 9-25-2016

Days with Precipitation over .1

Date	Precipitation (Inches)
9.25.11	.30
10.2.11	.24
10.3.11	.59
10.4.11	1.07
10.5.11	.83
10.6.11	.26
10.9.11	.11
10.10.11	1.06
11.3.11	.40
11.5.11	.25
11.6.11	.48
11.17.11	.22
11.18.11	.63
11.22.11	.36
11.23.11	1.30
12.14.11	.21
12.15.11	.35
12.25.11	.10
12.28.11	.25
12.29.11	.54
12.30.11	.83
1.15.12	.21
1.18.12	.97
1.19.12	2.26
1.20.12	1.80
1.21.12	.39
1.22.12	.35
1.25.12	.96
1.26.12	.34
1.31.12	.31
2.9.12	.17
2.10.12	.35
2.12.12	.18
2.13.12	.32
2.28.12	.81
2.29.12	.41
3.1.12	.61
3.11.12	.46
3.12.12	.38
3.13.12	1.28
3.15.12	1.06
3.16.12	.91

Date	Precipitation (Inches)
3.18.12	.16
3.20.12	.13
3.21.12	.82
3.24.12	.28
3.26.12	.20
3.27.12	.87
3.28.12	.17
3.29.12	2.20
3.30.12	1.05
3.31.12	1.24
4.3.12	.40
4.4.12	.64
4.9.12	.14
4.10.12	.29
4.11.12	.54
4.12.12	1.22
4.16.12	.12
4.18.12	.41
4.26.12	.68
5.3.12	.20
5.4.12	.13
5.24.12	.15
6.3.12	.19
6.4.12	.75
6.5.12	.12
6.22.12	.72
6.26.12	.13
7.17.12	.52
10.15.12	.25
10.16.12	.57
10.21.12	.64
10.22.12	.43
10.23.12	.10
10.26.12	.15
10.31.12	.41
11.8.12	.44
11.9.12	.32
11.16.12	.15
11.17.12	.82
11.20.12	1.28
11.28.12	.59
11.29.12	2.15
11.30.12	.12
12.1.12	1.59
12.2.12	1.29
12.4.12	.43
12.5.12	.19
12.11.12	.42

Date	Precipitation (Inches)
12.16.12	.41
12.17.12	.34
12.18.12	.27
12.20.12	1.62
12.21.12	1.09
12.22.12	1.23
12.23.12	.14
12.25.12	.73
12.26.12	.94
1.5.13	.11
1.9.13	.47
1.10.13	.36
1.11.13	.17
1.23.13	.63
1.25.13	.36
1.26.13	.15
1.27.13	.14
1.29.13	.10
2.6.13	.10
2.7.13	.38
2.19.13	.52
2.22.13	.22
2.27.13	.21
2.28.13	.20
3.5.13	1.04
3.6.13	.75
3.20.13	.55
3.25.13	.11
3.30.13	.26
3.31.13	.16
4.4.13	.83
4.5.13	.14
4.6.13	.33
4.7.13	1.04
5.6.13	.22
5.16.13	.12
5.27.13	.50
6.24.13	.19
9.20.13	.44
9.21.13	.22
9.24.13	.46
9.25.13	.10
9.29.13	1.38
9.30.13	.26
11.2.13	.10
11.12.13	.23

Date	Precipitation (Inches)
11.19.13	.25
11.20.13	.53
12.2.13	.15
12.6.13	.23
1.8.14	.22
1.11.14	.44
1.29.14	.54
2.6.13	.26
2.7.14	.46
2.8.14	.27
2.9.14	.63
2.12.14	.47
2.13.14	.66
2.14.14	1.26
2.15.14	.66
2.18.14	.40
2.26.14	.32
2.27.14	.41
3.3.14	.52
3.5.14	.19
3.9.14	2.58
3.16.14	.18
3.25.14	.61
3.26.14	.33
3.28.14	.95
3.30.14	.10
3.31.14	.41
4.1.14	.26
4.21.14	.28
4.23.14	.23
4.24.14	.26
4.25.14	.17
5.5.14	.25
5.8.14	.10
6.25.14	.28
9.17.14	.38
9.24.14	2.59
9.25.14	.10
10.14.14	.47
10.15.14	.39
10.17.14	.25
10.20.14	.52
10.22.14	.45
10.23.14	.79
10.24.14	.26

Date	Precipitation (Inches)
10.25.14	.66
10.26.14	.10
10.30.14	.44
10.31.14	.29
11.6.14	.22
11.12.14	.10
11.13.14	.12
11.14.14	.33
11.19.14	.46
11.20.14	.57
11.21.14	.75
11.22.14	.22
11.28.13	.30
11.29.14	.76
12.2.14	.13
12.3.14	.29
12.5.14	1.25
12.7.14	.32
12.10.14	1.17
12.11.14	1.27
12.12.14	.42
12.15.14	.21
12.16.14	.34
12.17.14	.42
12.18.14	.40
12.19.14	.31
12.20.14	1.38
12.21.14	.92
12.22.14	.11
12.24.14	.69
12.29.14	.10
1.15.15	.19
1.16.15	.31
1.17.15	.36
1.18.15	.50
2.2.15	.94
2.5.15	1.14
2.6.15	1.60
2.8.15	.31
2.9.15	.50
2.26.15	.24
2.27.15	.23
3.11.15	.12
3.15.15	.54
3.20.15	.21
3.22.15	.95

Date	Precipitation (Inches)
3.23.15	.49
3.24.15	.60
3.27.15	.10
3.31.15	.19
4.5.15	.19
4.6.15	1.66
4.11.15	.10
4.13.15	.44
8.29.15	.36
9.16.15	.21
10.17.15	.13
10.19.15	.10
10.25.15	.10
10.28.15	.65
11.2.15	.20
11.8.15	.25
11.9.15	.24
11.15.15	1.24
11.17.15	.35
11.18.15	.18
11.19.15	.41
11.24.15	1.47
12.2.15	.17
12.3.15	1.26
12.4.15	.22
12.5.15	.14
12.6.15	.14
12.8.15	.15
12.9.15	.93
12.10.15	.79
12.11.15	1.27
12.12.15	.52
12.13.15	2.20
12.17.15	.14
12.18.15	1.97
12.19.15	.12
12.20.15	.34
12.21.15	1.67
12.22.15	.20
12.23.15	.68
12.24.15	.78
12.25.15	.22
12.27.15	.20
12.28.15	.17
12.29.15	.15
1.4.16	.32
1.5.16	.72
1.6.16	.22

Date	Precipitation (Inches)
1.7.16	.24
1.8.16	.31
1.9.16	.68
1.12.16	.82
1.13.16	.73
1.14.16	.74
1.15.16	.16
1.16.16	.20
1.17.16	2.28
1.18.16	.17
1.19.16	.39
1.22.16	1.10
1.23.16	.57
1.24.16	.25
1.28.16	.72
1.29.16	1.20
2.3.16	.34
2.17.16	.49
2.18.16	.79
2.19.16	.77
2.21.16	.12
2.26.16	.25
3.1.16	.16
3.2.16	.37
3.5.16	1.88
3.6.16	.29
3.8.16	.23
3.9.16	.86
3.10.16	.82
3.11.16	.19
3.12.16	.65
3.13.16	.56
3.14.16	.23
3.19.16	.10
3.20.16	.29
3.21.16	.93
3.22.16	.27
4.3.16	.16
4.13.16	.48
4.14.16	.51
4.21.16	.59
4.22.16	.53
4.24.16	.14
4.27.16	.27
5.20.16	.28

Date	Precipitation (Inches)
5.21.16	.26
7.8.16	.30
7.9.16	.18

EXHIBIT B



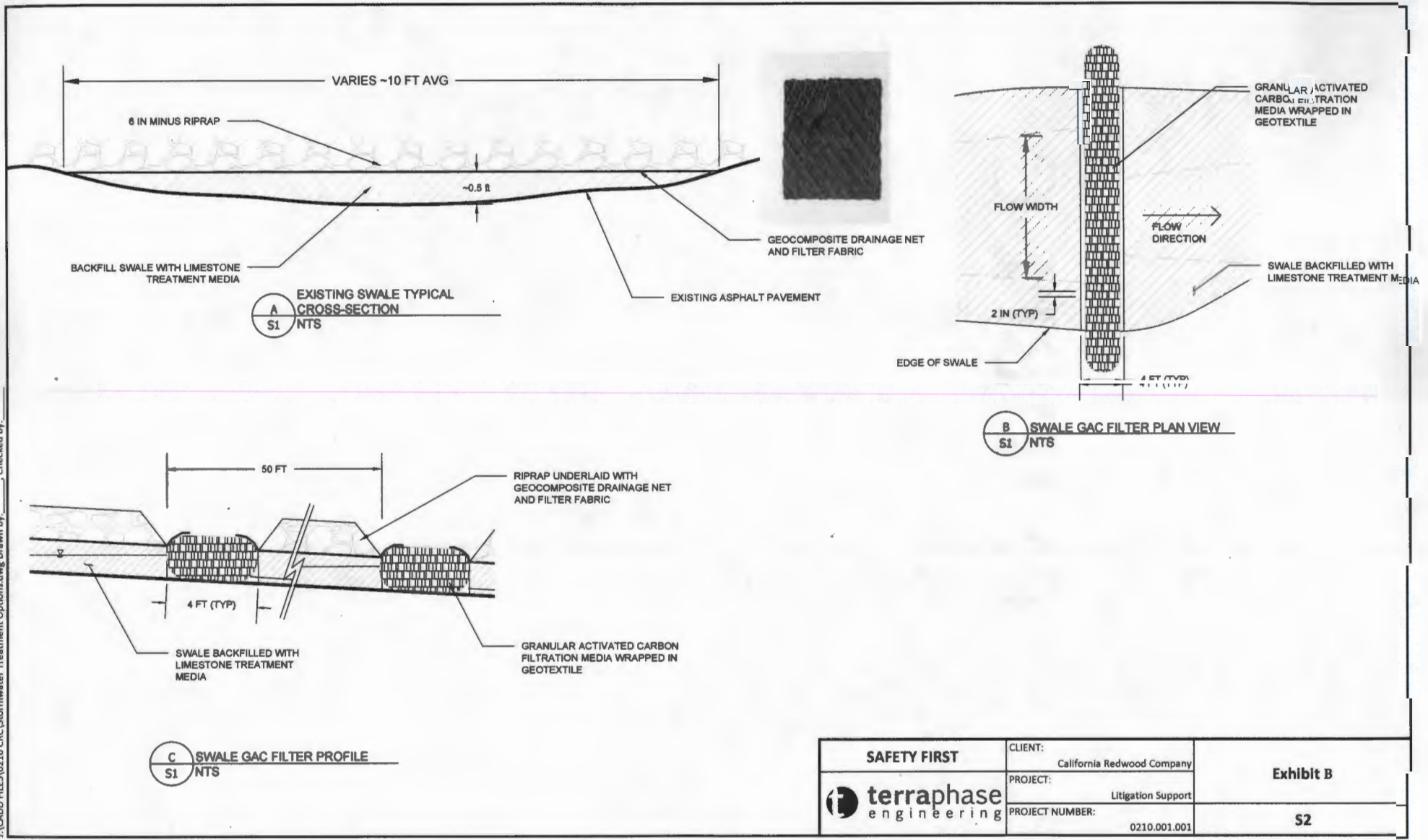
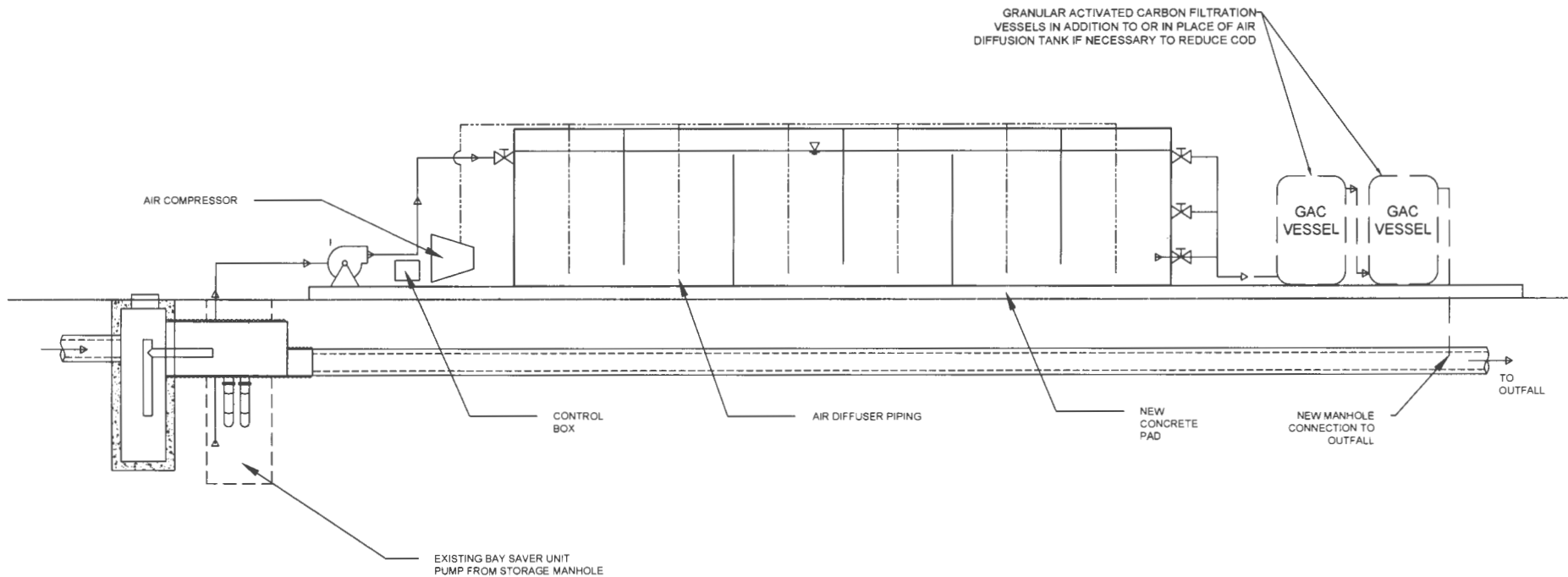


EXHIBIT C


\\nasdaq\FILES\0210 CRC\0210water Treatment Options.dwg Drawn by: Checked by:



SAFETY FIRST 	CLIENT:	California Redwood Company	Exhibit C 51
	PROJECT:	Litigation Support	
	PROJECT NUMBER:	0210.001.001	



D 20,000 GALLON WEIR TANK WITH AIR DIFFUSION
S1 NTS

SAFETY FIRST 	CLIENT:	California Redwood Company	Exhibit C
	PROJECT:	Litigation Support	
	PROJECT NUMBER:	0210.001.001	S2